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10/622,486	07/21/2003	Pierre Garnier	235812US26CONT	4972
22850	7590	08/06/2008	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			HUGHES, ALICIA R	
			ART UNIT	PAPER NUMBER
			1614	
			NOTIFICATION DATE	DELIVERY MODE
			08/06/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/622,486	Applicant(s) GARNIER, PIERRE	
	Examiner ALICIA R. HUGHES	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 21 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 77-88 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 77-88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 77-88 are pending and the subject of this Office Action. Applicants cancelled claim 65-76 in their response on 21 February 2008.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 February 2008 has been entered.

Applicants' arguments, filed on 21 February 2008, have been fully considered and are deemed to be persuasive regarding the previous rejection. Rejections and objections not reiterated from previous Office Actions are hereby withdrawn.

Upon reconsideration of the pending claims, as presented, the following new rejections are applied. They constitute the complete set of rejections being applied to the instant application presently.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejection - 35 U.S.C. §112, First Paragraph

Claims 77-88 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described

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in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant, in its Remarks filed on 21 February 2008, filed new claims 77-88 to replace cancelled claims 65-76. Applicants made a revision to their previous independent claim 54, which they canceled and replaced with now previous claim 65 which read “wherein the test device is different from the skin cosmetic or skin care product.” This changed the scope of the claim and originally filed and a review of specification, as filed, did not disclose the invention embodied by the present set of claims. And if the same is supported, Applicant failed to draw attention to the page and line numbers in the specification that support its amendment.

Now, Applicant has cancelled previous claim 65 and added new independent claim 77 which reads "where the test device does not contain the skin cosmetic or skin care product," which similarly, changes the scope of the original claim and in a manner not supported by the specification, and for this reason, claims 77-88 are rejected for failing to meet the written description requirement.

This is a new matter rejection.

Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted

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on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 77-87 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bouyer (FR 2.063.743 A1).

Bouyer teaches a process for evaluating skin relief (English translation, page 1, lines 23-26), comprising the steps of applying a substrate with an adhesive surface onto a test zone of skin (English translation, page 1, line 11) so that the adhesive surface is in contact with the skin at contact locations and not in contact with sunken zones of the skin (i.e., does not contact wrinkles so that they are easily seen on the strip; translation, page 1, lines 23-24); removing the substrate (translation, page 1, lines 11-12; the strip is lifted off); and evaluating an image formed on the adhesive surface of the substrate, wherein the image results from modification of an appearance of the adhesive surface at said contact locations (translation, page 1, lines 10-26. In addition, Bouyer also teaches that the substrate is transparent (translation, page 3, line 6) and that the image represents wrinkles or lines present in the test zone.

Bouyer also teaches a cosmetic treatment process (translation, page 2, lines 7-8), comprising the steps of applying a substrate with an adhesive surface onto a test zone of the skin (translation, page 1, line 11); removing the substrate (translation, page 1, lines 11-12); the strip is lifted off); analyzing an image formed on said analyzing step (translation, page 1, lines 10-26); recommending a care product based on said analyzing step (translation, page 2, lines 6-7; skin type is determined to prescribe a beauty product); and applying said care product on the skin (while Bouyer does not specifically describe the use of the product, it necessarily flows that such use is the presumed result of the prescription based on the skin type determination).

Furthermore, Bouyer teaches that said applying step is performed so that the adhesive surface is in contact with the skin at contact locations and not in contact with sunken zones of the skin (i.e., does not contact wrinkles so that they are easily seen on the strip; translation, page 1, lines 23-24); and said image results from a modification of an appearance of the adhesive surface at the contact locations (translation, page 1, lines 10-26); and that the analyzing step evaluates wrinkles on said skin (translation, page 1, line 23).

In view of the foregoing, claims 77-88 are clearly anticipated.

Claims 77-88 are rejected under 35 U.S.C. § 102(e) as being anticipated by Slavtcheff et al. '235 (US 2002/0182235 A1).

Slavtcheff et al. teach a process for evaluating skin relief (paragraph [0053]), comprising the steps of applying a substrate with an adhesive surface (paragraph [0046], lines 1-2) onto a test zone of a skin (paragraph [0052], lines 3-4) so that the adhesive surface is in contact with the skin at contact locations and not in contact with sunken zones of the skin (paragraph [0055]); removing the substrate (paragraph [0052], line 7); and evaluating an image formed on the adhesive surface of the substrate (paragraphs [0053] and [0054]), wherein the image results from the modification of an appearance of the adhesive surface at said contact locations (paragraph [0048], lines 7-10). In addition, Slavtcheff et al. also teach evaluating a degree of aging of the skin based on said image (paragraph [0053], lines 3-4); that the substrate is transparent (paragraph [0048], lines 6-7); placing the substrate in front of a background of dark color before said evaluating step (paragraph [0048], lines 9-10); that the substrate comprises a gripping tab extending from at least one side of the adhesive surface (paragraph [0050], lines 1-2), as

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additionally stipulated by claim 6; and that the test zone is one of a crow's foot regions, a forehead, and a corner of a mouth (paragraph [0049], lines 3-4), as set forth in claim 7.

Slavtcheff et al. further teaches applying and removing successively a plurality of substrates on said test zone thereby forming a plurality of successive images (paragraph [0054], lines 2-9); recording the plurality of images (i.e., the images are "recorded" on image cards; paragraph [0054], lines 7-9); comparing the recorded images (i.e., to determine if there are fewer lines and wrinkles; paragraph [0054], lines 4-5); to analyze an effect of a treatment performed between successive images (i.e., treatment with cosmetic product; paragraph [0054], lines 1-4); simultaneously displaying said plurality of images so as to allow a person to perform the comparing step (paragraph [0054], line 8; the images can recorded on the *same* image card which "displays" them simultaneously to a viewer of the card); and that the image represents wrinkles and lines present in the test zone (paragraph [0052], line 10).

Slavtcheff et al. teaches a process for determining an efficacy of a product (Abstract, lines 3-7), comprising the steps of applying a first substrate with a first adhesive surface onto a test zone of the skin (paragraph [0052], lines 1-4); removing the first substrate (paragraph [0052], lines 6-7); applying a product on the test zone (paragraph [0053]); applying a second substrate with a second adhesive surface onto the test zone (paragraph [0054], lines 1-3; obtaining a second imprint requires applying a second substrate); removing said second substrate (paragraph [0054], lines 1-3; obtaining a second imprint requires also requires removing the second substrate); comparing a first image formed on the first substrate before application of the product to a second image formed on the second substrate after application of the product thereby deducing information about the efficacy of the product (i.e., the images are compared to

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determine if fewer lines and wrinkles are present in the second image; paragraph [0054], lines 3-5).

In addition, Slavtcheff et al. teaches that the applying steps are performed so that the first and second adhesive surfaces are in contact with the skin at contact locations and not in contact with sunken zones of the skin (i.e., does not contact wrinkles so that they are easily seen on the strip; translation, page 1, lines 23-24); and said first and second images result from modification of an appearance of the adhesive surfaces at the contact locations (paragraph [0048], lines 7-10); and that the product has an effect on wrinkles (paragraph [0052], lines 1-2; i.e., anti-aging products) and the comparing step provides information about the efficacy of said product on the wrinkles (paragraph [0002]; paragraph [0021]; paragraph [0054]).

In view of the foregoing, claims 77-88 are clearly anticipated.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Hughes whose telephone number is 571-272-6026. The examiner can normally be reached from 9:00 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at 571-272-0718. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Public PAIR only. For information about the PAIR system, see <http://pair-direct-uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alicia R. Hughes/
Examiner, Art Unit 1614

/Raymond J Henley III/
Primary Examiner, Art Unit 1614